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No. 80-2124

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

AMBASSADOR COLLEGE, INC., *et al.*,
Petitioners,

v.

GEORGE DANIEL MCELROY,
Respondent.

REPLY BRIEF OF PETITIONERS

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Introduction

Pursuant to Rule 22.5 of the Rules of this Court, petitioners Ambassador College, Inc., *et al.*, file this brief in reply to respondent McElroy's Brief in Opposition to Petition for A Writ of Certiorari, filed with this Court on July 15, 1981.[1]

ARGUMENT

I.

McElroy Has Advanced No Basis for Divesting the Church of Title to the Property He Donated Other Than the "Undue Influence" Supposedly Evidenced by His Very Adherence to the Church's Precepts and Practices.

For all of McElroy's unsupported innuendos as to the "methods" by which petitioners "were able to get" him

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[1] Petitioners will sometimes be referred to herein collectively as "the Church." *See* Petition at 1 n.1 (identifying petitioners individually).

to deed his farm to them "via reams of correspondence and solicitation," [2] McElroy confirms petitioners' contention that it was *not* any finding of force, fraud, or some other unlawful *means* of inducing the donation, but rather the *mere fact of McElroy's acceptance of church doctrine,* and the *mere fact of his willingness to act on his faith* by contributing his farm to the Church, that caused the courts below to treat "poor, old farmer" McElroy [3] as the hapless victim of "undue influence" by petitioners, and hence to nullify the deed for the farm and to revest in McElroy full title thereto.

Thus, apart from his limited formal education and supposed "lack of . . . sophistication," [4] McElroy's "susceptibility to undue influence" is said to have been shown only by (a) the very deeding of his farm to the Church,[5] (b) his *decision* to deed it as he did (*i.e.*, McElroy's "slavish following of all Attorney Helge's instructions" [6]), and (c)

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[2] Brief in Opposition ("Opp.") at 7-8.

[3] *Id.* at 2.

[4] *Id.* at 9. *But see* Petition at 3 & n.3 (noting considerable business experience of McElroy, including service as section coordinator in National Farmers Organization and establishment of successful plan to increase income of member cattlemen in region).

[5] Opp. at 9-10.

[6] *Id.* at 9. *But see* Petition at 16 n.53 (noting that McElroy had *refused* to follow at all—much less "slavishly"—the Church's recommendation that he sell his farm and move to the city to be nearer to the Church). Nothing either in the record or in McElroy's Brief in Opposition bears out his repeated suggestions of questionable conduct on the part of Church counsel Helge. To the contrary, as McElroy himself notes, the record shows that Helge counselled McElroy to obtain outside advice in his dealings with the Church. Opp. at 5. And, as noted in the petition, McElroy himself emphasized that "[n]obody had influence over me, I did what I wanted to do." Petition at 7 & n.26. McElroy's spurious attack on counsel Helge's "methods," Opp. at 7, thus cannot obscure the grave constitutional issues in this case.

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"his general guillibility which was best witnessed by the trier of fact in August 1979" [7]—to wit, McElroy's belief in the dogma and prophecies of the Church.[8] And petitioners' "opportunity to influence McElroy" is said to have been shown only by (a) his contributions to the Church,[9] (b) "his participation in a massive self study," [10] (c) his reduction of his herd in keeping with church teachings,[11] and (d) "his careful adherence to anything presented by the Church or [its attorney]." [12]

In short, it was the mere fact "[t]hat McElroy believed—and acted in accord with his belief—[that] became . . . *proof in itself* that his mind had been 'dominated' by the Church." [13] Far from advancing in this Court "simply a veiled sufficiency of the evidence approach," [14] petitioners challenge as fundamentally antagonistic to the First and Fourteenth Amendments the use by the courts below of McElroy's religious beliefs and actions thereon as *the* proof that his contribution of his farm to the Church should be set aside as the product of "undue influence." [15]

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[7] Opp. at 7.

[8] *See* Petition at 4-7; *id.* at 9 (noting that McElroy's attorney had emphasized to the jury that McElroy had actually "bought [the Church's doctrine] lock, stock" and barrel); *id.* at 9-12 & nn. 33, 34.

[9] Opp. at 10.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] Petition at 16 (footnotes omitted) (quoting App. 5a).

[14] Opp. at 12.

[15] *See* Petition at 15-24.

II.

McElroy Has Failed to Defend the Use of His Religious Beliefs and Actions by the Courts Below to Prove "Undue Influence" by Petitioners, *or* to Justify the Court of Appeals' Disregard of the Substantial Risk That the Jury's Verdict Rested on Grounds Forbidden by the Religion Clauses.

Having confirmed petitioners' contention that the judgment below treated McElroy's very acceptance, on faith, of the Church's teachings as proof of "indoctrination," and that, on this basis alone, the courts below permitted McElroy to rescind his long-completed religious donation without proof of force, fraud, or other abuse, McElroy nevertheless blithely asserts that "no doctrinal attack issued here,"[16] and that "[t]his case represents [nothing more than] a long and ugly effort by petitioners to introduce the First Amendment into a case where it has no place."[17] Yet McElroy:

(a) leaves entirely unanswered petitioner Church's claim that the Court of Appeals' judgment rests on criteria that defy the Religion Clauses and the Church's rights thereunder[18];

(b) fails to address petitioners' argument that the rulings below represent discriminatory intrusions by civil courts into religious matters and jeopardize the autonomy of churches *vis-à-vis* both the state and disgruntled members or contributors[19]; and

(c) ignores altogether petitioners' objection that the courts below up-ended long-settled constitutional doc-

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[16] Opp. at 8. *But see* Petition at 4-7, 9-12 & nn. 33, 34.

[17] Opp. at 15.

[18] Petition at 15-19.

[19] *Id.* at 19-24.

trine by refusing even to entertain the Church's First Amendment challenge to the state's "undue influence" rule *as applied to it*, on the transparently untenable ground that the rule, if *facially* valid, could pose no further threat.[19]

Especially given McElroy's refusal, on the record in this case, to confront any of these claims in his Brief in Opposition, the case for review on certiorari seems persuasive indeed—lest suits for refund or rescission become routine vehicles for the judicial surveillance of religious truth.

CONCLUSION

For the foregoing reasons, petitioners respectfully pray that the instant petition be granted.

Respectfully submitted,

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[19] *Id.* at 25-29.

* Petitioners acknowledge the assistance of David H. Remes (J.D. 1979) of Boston, Mass., in the preparation of this petition.